Supreme Court, U.S.
FILED
SEP 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1503

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

NANCY BETH CRUZAN, by her parents and co-guardians, LESTER L. and JOYCE CRUZAN,
Petitioners,
v.
DIRECTOR OF MISSOURI DEPARTMENT OF HEALTH, and ADMINISTRATOR OF THE MISSOURI REHABILITATION CENTER AT MT. VERNON,
Respondents.

On Writ of Certiorari to the Missouri Supreme Court

BRIEF OF THE GENERAL BOARD OF CHURCH AND SOCIETY OF THE UNITED METHODIST CHURCH AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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September 1, 1989

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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INTEREST OF AMICUS

The General Board of Church and Society of The United Methodist Church is a national program agency of The Church, which has 9.5 million members. The prime responsibility of the General Board is to seek implementation of the Social Principles of The United Methodist Church through forthright witness on important social issues, educational programs, and efforts to influence the development of public policy and law.

Amicus recognizes the agonizing personal and moral decisions faced by many, including petitioner Nancy Beth

Cruzan's parents, concerning the right of their daughter Nancy, who lies in a permanent vegetative state, to die with dignity. *The Book of Discipline 1988*, the book of law of The United Methodist Church, in "Social Principles" Paragraph 71 II H states:

> Death with Dignity.—We applaud medical science for efforts to prevent disease and illness and for advances in treatment that extend the meaningful life of human beings. At the same time, in the varying stages of death and life that advances in medical science have occasioned, we recognize the agonizing personal and moral decisions faced by the dying, their physicians, their families, and their friends. Therefore, we assert the right of every person to die in dignity, with loving personal care and without efforts to prolong terminal illnesses merely because the technology is available to do so.

The resolution of the constitutional issue presented in this case bears directly on the interest of *amicus* in the advancement of this principle.

Consent of the parties to the filing of this *amicus* brief has been obtained and will be filed with the Clerk of this Court.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents an issue of great constitutional and ethical importance: whether a person in a persistent vegetative state may be denied her fundamental Fourteenth Amendment right to have life-prolonging treatment withdrawn, on the basis of a generalized countervailing governmental interest in prolonging life.

The issue arises in an agonizing moral and emotional context. Petitioner Nancy Cruzan was grievously injured in an automobile accident in January 1983. For several minutes in the aftermath of the accident she ceased all breathing, her heart stopped, and she lost consciousness. Paramedics administered cardiopulmonary resuscitation,

inserted a tube into Nancy's windpipe, and inserted an intravenous tube to introduce medication into her bloodstream. This on-the-scene emergency treatment revived the functioning of Nancy's heart and lungs.

But Nancy was not restored to consciousness. After approximately a month of hospitalization—during which she remained unconscious—her treating physicians inserted a gastrostomy tube into her stomach, so as to provide her with nutrition directly. The treating physicians administered rehabilitative therapies for a period of several weeks thereafter, but Nancy did not respond favorably. She has remained hospitalized in an unconscious state for the more than six years that have passed since her accident. Much of her brain tissue was destroyed by the deprivation of oxygen when she stopped breathing immediately after her accident. And her body has deteriorated significantly over that span. Appendix to Petition for Certiorari ("App.") at A91-A93.

Nancy exists in what physicians define as a persistent vegetative state. Patients in this state retain some elemental bodily functions such as breathing and digesting food, and may react reflexively to some stimuli, but have no conscious awareness of self or environment. Because Nancy's condition was caused by a deprivation of the flow of oxygen to the brain, her prospects for recovery are especially poor. The damage that oxygen deprivation caused to her brain tissue is irreversible, and there is no medical prospect that she will regain her conscious life. As the Missouri Supreme Court concluded, "the evidence is clear and convincing that Nancy will never interact meaningfully with her environment again." App. A34. There is, however, a significant prospect that she will go on functioning at this elemental level for some time. With the provision of nutrition and other medical treatment, patients in a persistent vegetative state may survive for substantial numbers of years. *See* President's Commission for the Study of Ethical Problems in Medi-

cine and Biomedical and Behavioral Research, *Deciding to Forego Life-Sustaining Treatment* 174-181 (1983).

Confronted with this reality, Nancy's parents sought to implement the treatment decision they believed their daughter would want: discontinuation of the artificial provision of nutrients that keeps Nancy's body functioning at this elemental level. The parents petitioned the Missouri courts for the authority to discontinue treatment. Although the trial court granted the request, the Missouri Supreme Court overturned the trial court's decision. The state supreme court reached this result by weighing Nancy's right to have the life-prolonging nutrition withdrawn against the State's "interest in the preservation of life." App. A43.

The court discounted Nancy's right on the ground that, when previously competent, she had never given clear, formal expression of an intent to exercise the right in the event of permanent unconsciousness. No deference was accorded to her parents and coguardians, whose best judgment was that Nancy would want the artificial nutrition discontinued under the present circumstances; indeed, the court found that judgment "inherently unreliable." *Id.* at A43. In light of this purported "uncertainty," the court concluded that the state interest "outweighed any rights invoked on Nancy's behalf." *Id.*

Amicus does not offer a comprehensive analysis of the constitutional issue raised by these proceedings. In the judgment of *amicus*, however, this Court's constitutional duty to mark the proper bounds of Ms. Cruzan's fundamental Fourteenth Amendment right to have life-prolonging treatment withdrawn should be informed by the deeply held ethical principles of this nation's judeo-christian religious tradition, a tradition in which Nancy herself believed deeply. As this Court has made clear, "[i]t is an established part of our constitutional jurisprudence that the term 'liberty' in the Due Process Clause extends beyond freedom from physical restraint" and

includes protection of personal interests that are "'so rooted in the traditions and con*science* of our people as to be ranked as fundamental.'" *Michael H. v. Gerald D.*, 109 S. Ct. 2333 (1989) (plurality opinion) (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934) (emphasis added); *accord Moore v. East Cleveland*, 431 U.S. 494, 503 (1977) (Opinion of Powell, J.) (Due Process protects personal rights "deeply rooted in this Nation's history and tradition").

Amicus does not urge that the views set forth herein should be adopted because they are Christian views and for that reason represent a correct constitutional resolution of the present issue. To the contrary, *amicus* is firmly committed to the constitutional principle that all religions are entitled to equal respect and equal opportunity to flourish. *Amicus* does urge that this Court's assessment of whether the right at stake here is "deeply rooted in the traditions and conscience of our people" should be informed by our culture's traditional moral understandings, the development of which has been shaped by the religious and ethical principles of *amicus* and other religious organizations. And while *amicus* does not purport to speak for the entire judeo-christian community, the position it espouses with respect to the issue of a person's right to decline life-prolonging treatment is representative of a broad and deeply held traditional moral consensus.

In particular, *amicus* believes this Court's evaluation of Nancy Cruzan's interest in the withdrawal of artificial nutrition and the State's interest in prolonging life should reflect three principles fundamental to our tradition of conscience. *First*, life should not be assessed in purely medical terms. Life and health, as *amicus* understands them, are an integration of the spiritual, emotional and physical aspects of being. (Point I). *Second*, the goal of prolonging the physical life of the body at all costs and in whatever form is radically inconsistent with *amicus'*

understanding of the proper respect for life, and for death. (Point II). *Third*, choices about how best to cope with the natural ending of a life are at bottom intensely personal and family decisions, best made within the confines of the family. When, as in the present case, the choice of the individual is not known with certainty, the family should play a crucial role as surrogate for the individual. Government intrudes deeply and without sufficient justification into the sanctity of the individual and the family when it seeks to dictate the standards by which these profoundly personal and family decisions must be made, and when it refuses to accord the family its proper role in making these decisions. (Point III).

ARGUMENT

I. THIS COURT'S EVALUATION OF MS. CRUZAN'S FUNDAMENTAL RIGHT TO WITHDRAWAL OF ARTIFICIAL NUTRITION AND THE STATE'S GENERALIZED INTEREST IN PROLONGING LIFE SHOULD REFLECT TRADITIONAL UNDERSTANDINGS OF THE MEANING OF HEALTH AND LIFE.

The epic progress of medical science in recent generations has resulted in great gains in the prevention of disease and the extension of the meaningful life of human beings. The power of medical science to extend physical life has, however, brought increasing numbers of persons face-to-face with profound and excruciating choices about the proper limits of medical efforts to prolong life when cure of a patient's debilitating condition is not possible—*i.e.* when a patient has a terminal illness or when, as in this case, a patient has permanently lost conscious functioning. *See The Covenant of Life and the Caring Community* (Report of the Advisory Council on Church and Society to the 195th General Assembly of the Presbyterian Church U.S.A., 1983) (hereafter The Covenant of Life).

Such decisions are inevitably and inextricably personal, emotional, moral and spiritual. They require a direct confrontation with the meaning of human health and life itself. These are crucial questions of faith and being. The physical is but one component of our traditional understanding of health and life. "Health has many dimensions: anatomical, physical, spiritual, and mental." *Life Abundant: Values, Choices and Health Care, The Responsibility of the Presbyterian Church (U.S.A.)* ¶ 37.24 (Report of the Advisory Council on Church and Society to the 200th General Assembly, 1988) (hereafter *Life Abundant*); *accord Health and Wholeness*, Resolution of The United Methodist Church, adopted 1984, in *The Book of Resolutions* at 235-241 (1988) (hereafter *Health and Wholeness Resolution*) ("health is something beyond, but not exclusive of, biological well-being"; "health maintenance requires understanding of the unity of the human body, mind and spirit"). This traditional understanding has its roots in the New Testament. *E.g.*, *Matthew* 9:20-22; *see Life Abundant* ¶ 37.737.

Consistent with these core understandings, it is the view of *amicus* that "health care is inadequate when it fixes its attention solely on the body and its physiological functions, as is any religion that focuses its interest entirely on the soul." *Health Care Delivery and Policy Statement*, Resolution of The United Methodist Church, adopted 1980, in *The Book of Resolutions* at 241 (1988) (hereafter *Health Care Delivery Policy Statement*). Indeed, "[t]o ignore the spiritual or mental dimensions of a person while addressing physical injury or illness is as scientifically irresponsible as it is religiously irresponsible to treat spiritual needs and ignore the physical and mental dimensions of the human body." *Life Abundant* ¶ 37.24.

These deeply rooted principles have particular application to the issue before this Court. Evaluation of the interests at stake should not be premised on an impover-

ished understanding of the meaning of health and life. A failure to acknowledge that life encompasses the integration of physical, mental, emotional and spiritual being could well skew the analysis by improperly diminishing this Court's assessment of the legitimacy of a person's decision to forego life-prolonging treatment in the event of a permanent loss of consciousness. Conversely, failure to acknowledge these traditional understandings may result in an exaggerated assessment of the strength of the State's interest in preserving elemental physical functioning notwithstanding the permanence of the condition and the contrary wishes of the patient and family.

II. THE GOAL OF PRESERVING PHYSICAL EXISTENCE AT ALL COST IS FUNDAMENTALLY AT ODDS WITH TRADITIONAL UNDERSTANDINGS OF RESPECT FOR LIFE, AND FOR DEATH

The natural corollary of this traditional understanding of health and life is a profound respect for "the right of every person to die in dignity . . . without efforts to prolong terminal illnesses merely because the technology is available to do so." *Social Principles of The United Methodist Church*, ¶ 71.II.H in *The Book of Discipline* (1988) (hereafter *Social Principles*). Pain, illness and eventual death are a natural part of the human condition. *See Life Abundant* ¶ 37.748. "There are limits on life's duration, on our ability to know . . . . [a]nd there are limits on our ability to bring health, to heal sickness, stop suffering, or maintain life." *Life Abundant* ¶ 37.744; *accord Social Principles* ¶ 71.II.H.

For this reason, traditional understandings of the appropriate respect for life and for death do not demand herculean efforts to stave off mortality and to maintain elemental physical existence after the mind and spirit have passed into permanent unconsciousness. To the contrary:

> [A] point arrives after which continued intervention represents not so much a commitment to health as a refusal to acknowledge the finiteness of human existence. . . . When every reasonable attempt has been made to rescue, to heal, to restore to usefulness and meaning, we must then look differently at the responsibilities to "do no harm" or protect in the midst of enormously stressful situations. When life support systems are removed, after reasonable and responsible attempts to save have run their course, allowing death to complete its course, we must not confuse the acknowledgment of death with the taking of life.

Life Abundant ¶ 37.744.

The modern technological tendency to disrespect the appropriate, natural ending of life reflects a deeper failure to resist the "temptation to idolize bodily life by making retention of physical life the only good and primary goal." *The Covenant of Life and the Caring Community*, Sec. II, Ch. 5, at C.4 (Policy Statement of the 195th General Assembly of the Presbyterian Church U.S.A. 1983) (hereafter *The Covenant of Life*). Our traditional understandings do not demand that all conceivable effort be made "to try to keep a person's body alive no matter how empty that life may be. Human beings are transcendent creatures. Real life comes from beyond bodily function." *Id.*

These fundamental understandings have a direct and obvious bearing on the appropriateness of withdrawing life-prolonging treatment to a person permanently in a persistent vegetative state:

> [W]hen the capacity for human relationship is irretrievably lost, death has occurred regardless of what biological function can be sustained. In medical terms, that means when brain function ceases and when a flat electroencephalogram occurs, cardiovascular activity ceases, or other tests of responsiveness have been conducted and found to be negative.

> It is then that we recognize that death is in the midst of life, even as we celebrate the life that overpowers death.

Life Abundant ¶ 37.744.[1]

A person choosing to meet death naturally in the event of a permanent loss of all conscious existence is in no sense making an aberrant or eccentric choice. To the contrary, it is a choice fully consonant with traditional understandings of the proper bounds of life and the place of death. Slavish application of technology to preserve elemental physical functioning, in contrast, may well degrade the life, spirit and memory of the patient by preventing both patient and family from making peace with the end of life.

III. GOVERNMENT INTRUDES TOO DEEPLY ON THE INTEGRITY OF THE PERSON AND THE FAMILY WHEN IT OVERRIDES PERSONAL AND FAMILY DECISIONS TO DISCONTINUE THE LIFE-PROLONGING TREATMENT OF A PERSON WITH NO PROSPECT OF REGAINING ANY CONSCIOUS LIFE.

Properly understood, decisions about whether to extend the physical functioning of a person in a persistent vegetative state are at the core of an individual's right to personal integrity and dignity, within the context of the traditional community of the family. "[T]he traditions and conscience of our people" call for an appropriate respect for the ending of life and for the coming of death. *Cf. Michael H. v. Gerald D.*, 109 S. Ct. at 2333. The decision of how best to make peace with the passing away of life requires profound spiritual and moral choices by the individual. *See The Covenant of Life*, Sec. II, Ch. 5 at C.1. There can be no more fundamental personal decisions than whether to meet death naturally when the "capacity for human relationship," and for mental, emotional and spiritual life have ended, and whether to impose on families the extraordinary financial and emotional burden of continual care for a person who has permanently lost consciousness.

[1] By no means does *amicus* mean to imply endorsement of active euthanasia, or the *premature* termination of human life to avoid suffering.

Depriving the individual of the power to make these choices—or, in the event of incapacity, to have these choices made as the individual would have wanted—is fundamentally inconsistent with individual liberty, integrity and dignity. "The burden of decisionmaking is integral to humanness. And it is in making critical choices that human beings demonstrate their true values." *The Covenant of Life* Sec. 1, Ch. 1 at p. 4. Traditional understandings of the dignity of the person "affirm the responsibility of persons to make decisions about [the] quality and use" of life, and demand that "decisions at the end of life" are heeded "so that the wishes of persons who are dying are heard and respected." *Id.* at Sec. III (Policy Statement and Recommendations).

The decision of a competent individual to forego the possibility of elemental physical subsistence in the event of a permanent loss of consciousness must thus be entitled to the protection of the Fourteenth Amendment. When the State arrogates to itself the power to dictate the terms on which individuals and families make these decisions, it has simply intruded far too deeply into the core of personal dignity and integrity. Such intrusion cannot be justified by the assertion by the State of Missouri in this case that it is justified to vindicate a state interest in preserving life. As demonstrated, this generalized interest in "preserving life" is flatly inconsistent with our traditional understandings of the meaning of life and the appropriate acceptance of and respect for death.

Finally, when a person permanently loses consciousness without having formally expressed a choice about life-

prolonging treatment, the family's best judgment about the choice the person would have made is entitled to deference. The family is "the basic human community through which persons are nurtured and sustained in mutual love, responsibility, respect and fidelity." *Social Principles* ¶ 71.11. Family members should, and inevitably do share the responsibility of an individual's profound choices about making peace with the end of life. *See Health Care Delivery Policy Statement* at 242; *The Covenant of Life*, Sec. III. Traditionally, the passing away of life occurred within the family structure, typically in the family home. *See* President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, *Deciding to Forego Life-Sustaining Treatment* 17 (1983). The family knows the person best, will feel the loss most keenly, and will sense the responsibility of decision most profoundly.[2]

In this case, the Missouri Supreme Court acknowledged that Nancy was "blessed" in having a "loving family," App. A10, yet it labeled the testimony of Nancy's parents, sister, nieces, and close friends "inherently unreliable" as a guide to what Nancy would want. *Id.* at A41. Far from being inherently unreliable, the testimony of Nancy's family and close friends is the most reliable guide available to gain an understanding of who Nancy was and what she would want. "Almost invariably the patient's family has an intimate understanding of the patient's medical attitudes and general world view and therefore is in the best position to know the motives and considerations that would control the patient's medical decisions." *In re Jobes*, 529 A.2d 434, 445 (N.J. 1987). The family is also the proper decisionmaker because of "their special bonds" with the patient. *Id.* As the New Jersey Supreme Court has explained,

[2] The family's best judgment about the preferences of a family member should be entitled to particular deference when the judgment is in accord with the official religious beliefs held by a religion in which the family member believes deeply.

> Our common human experience informs us that family members are generally most concerned with the welfare of a patient. It is they who provide for the patient's comfort, care, and best interests, . . . and they who treat the patient as a person, rather than a symbol of a cause.

Id.

The Missouri Supreme Court has thus denied Nancy's family the role that other state courts have repeatedly granted families in comparable circumstances, and that this Court has repeatedly recognized that families have historically played. *See, e.g., Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nuture of the child reside first in the parents."). It is Nancy's family, and not the State, that should be entitled, absent some showing of a conflict of interest or other unusual concern, to act as the surrogate decisionmaker for Nancy Cruzan.

CONCLUSION

For the foregoing reasons, *amicus* respectfully requests that the decision of the Missouri Supreme Court be reversed.

Respectfully submitted,

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